

#### Members

Sen. Richard Bray, Chairperson  
Sen. David Ford  
Sen. William Alexa  
Sen. Timothy Lanane  
Rep. Robert Kuzman  
Rep. Dale Sturtz  
Rep. Ralph Ayres  
Rep. Kathy Richardson  
Justice Randall T. Shepard  
Timothy Curley  
Ernest Yelton  
David Lewis  
Sarah Taylor



## COMMISSION ON COURTS

*Legislative Services Agency*  
200 West Washington Street, Suite 301  
Indianapolis, Indiana 46204-2789  
Tel: (317) 233-0696 Fax: (317) 232-2554

#### LSA Staff:

Mark Goodpaster, Fiscal Analyst for the  
Commission  
Andrew Roesener, Attorney for the Commission

Authority: IC 33-1-15

### MEETING MINUTES<sup>1</sup>

**Meeting Date:** October 18, 2002  
**Meeting Time:** 10:00 A.M.  
**Meeting Place:** State House, 200 W. Washington St.,  
Room 431  
**Meeting City:** Indianapolis, Indiana  
**Meeting Number:** 3

**Members Present:** Sen. Richard Bray, Chairperson; Sen. David Ford; Sen. Timothy Lanane; Rep. Dale Sturtz; Rep. Kathy Richardson; Justice Randall T. Shepard; Timothy Curley; Ernest Yelton; David Lewis; Sarah Taylor.

**Members Absent:** Sen. William Alexa; Rep. Robert Kuzman; Rep. Ralph Ayres.

Chairman Bray called the meeting to order at 10:15 a.m.

The Commission members reviewed and approved the minutes from the previous meeting.

#### Postage Increases:

Chairman Bray recognized Rep. Richardson to discuss how postal rate increases have affected the budgets of the clerks of the circuit court. Rep. Richardson presented a memorandum on this topic prepared by Mark Goodpaster, fiscal analyst for the Commission. (See Attachment A) Rep. Richardson indicated that a committee of the clerks of the circuit court would continue to monitor this situation and refine the estimates.

#### Review of Staff Reports:

At the previous meeting, Commission members requested that staff provide more information on a series of policy questions about court fees. The following memos are included in the attached documents at the end of these minutes:

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<sup>1</sup> The minutes, and attachments referenced in these minutes are available online at <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

- Funding for the Judicial Technology and Automation Project (Attachment B).
- Court fees and salary expenditures for state paid court officers (Attachment C).
- The potential effect of traffic infractions being adjudicated as local ordinance violations (Attachment D).

### **Alternative Dispute Resolution:**

Chairman Bray recognized Magistrate Thomas Felts, Allen Circuit Court, to speak on the need to re-authorize PL 107– 2000. Magistrate Felts described the program to Commission members.

This program's legislative authorization ran between February 1998 and June 30, 2002. The project paid for mediation services for individuals unable to pay. It provided funding for training mediators who then provided *pro bono* mediation services. It paid for a court facilitator to assist in case management and produced a mediation video to educate parties about the benefits of mediation.

This program was funded by a \$20 fee that was added to the filing fee for domestic relations cases. Parties who asked for a waiver of filing fees were given special consideration. Since the program began, the court collected \$76,360 and paid \$74,610 for mediation services, facilitator services, consulting services and counseling, and promotional and miscellaneous expenses.

Magistrate Felts cited three main benefits of the program:

- Divorcing spouses are beginning to accept mediation as part of the divorce process.
- Mediation helps to reduce the length of the divorce cases.
- The number of cases where parties reappear before a judge to contest a provision of the divorce order has been reduced.

Three individuals also testified in support of the program:

- Judge Dan Dohohue, Clark Circuit Court and Chair of the Domestic Relations Committee of the Judicial Conference of Indiana
- Jane Siegel, Executive Director the Indiana Judicial Center
- Paul Leonard, Chair of the Family and Juvenile Law Section of in Indiana State Bar Association

One additional provision in the document presented to the Commission members would allow for other counties to also begin a program under certain circumstances.

By a roll call vote, the Commission members voted 10-0 to recommend introduction of this bill to the General Assembly.

### **Judges Retirement Fund Issues:**

The Commission members examined two issues affecting the Judges Retirement Statute: the eligibility of a trial court judge appointed by the Indiana Supreme Court to a *pro tempore* position to participate in the Judges Retirement Fund and state employment restrictions on pension recipients of the Judges Retirement Fund.

Eligibility of Judges Appointed by Supreme Court: Judge Barbara Brugnaux, Vigo Superior Court #5, was appointed to fill the term of the previous judge who was removed from the bench by the Indiana Supreme Court for disciplinary reasons. This appointment occurred in February 1994. She was elected to an additional term of office between June 1996 and December 2002. While serving as *pro tempore*, Judge Brugnaux was not permitted to participate in the Judges Retirement Fund because under current law, a judge appointed under Trial Rule 63 B is not considered to be a “regular” judge under IC 33-13-8-2.

The Commission recommended that PD 3562 be introduced during the 2003 General Assembly which would permit a judge appointed under Trial Rule 63 B to be eligible to participate in the Judges Retirement Fund.

Restrictions on State Employment: Under either IC 33-13-9.1-4 (the 1977 plan) or IC 33-13-10.1-6 (the 1985 plan), retirees who receive pension payments from the Judges Retirement Fund may only work in state government as senior judges or judges pro tempore. It was noted that when judges retire, they may be interested in pursuing other types of employment in Indiana state government.

The Commission recommended introduction of this concept in the 2003 General Assembly by a voice vote.

### **Senior Judges:**

The Commission members next examined four alternative methods of increasing the per diem salaries received by senior judges. A memorandum to the Commission members was prepared by Mark Goodpaster concerning these options. (See Attachment F). Chief Justice Shepard explained that under current law, senior judges are paid \$50 per day to serve as senior judge under IC 33-4-8-5. By contrast, senior prosecuting attorneys who are appointed under IC 33-14-1-6 may receive payment of as much as \$346 (the annual salary of \$90,000 divided by 260 annual work days) less the amount that they receive from the Prosecuting Attorneys Retirement Fund. Consequently, the per diem salary of the senior prosecuting attorney may be several times more than the salary of the senior judge.

The Commission members voted to recommend language to the General Assembly so that the salary of a senior judge would be \$50 per diem for the first 30 days, and for each day in excess of 30 days, the combination of:

- the compensation paid to a senior judge under the senior judge chapter; and
- the retirement benefits that the person appointed as a senior judge is receiving or is entitled to receive.

The salary may not exceed the minimum compensation to which a full-time trial court judge is entitled under IC 33-13-12.

### **Recovering Costs of Genetic Testing in Paternity Tests:**

Under IC 31-14-6-4, which concerns paternity actions, provides for the following:

If the state or a political subdivision of the state pays the initial costs of blood testing in a paternity action, the state or political subdivision may recover those costs from an individual found to be the biological father of the child in the action. The court shall determine the manner in which reimbursement for the costs is to be made.

Judge Yelton commented that almost all counties now collect genetic material for paternity tests by swabbing the mouth of the parties in question. Since this section in the code includes only the costs of blood tests as being reimbursable from the party in question, he recommended that “genetic testing” also be specifically included as a reimbursable expense in paternity actions.

The Commission by a voice vote recommended that a bill be introduced in the 2003 General Assembly that addresses this issue.

### **Adding New Court Officers:**

Commission members examined and recommended for introduction by voice vote during the 2003 General Assembly one court for each of the following counties:

- Hamilton County
- Vigo County
- DeKalb County
- Howard County

The Commission members also voted to recommend one magistrate for each of the following counties:

- Madison County
- Owen County

The Commission did not recommend a new magistrate for Pike County due to caseload statistics.

The Commission voted to recommend introduction of a bill to have the state General Fund assume the entire salary for juvenile court magistrates. Under current law, juvenile court magistrates are paid \$30,607 by the state and \$41,393 by the counties in which the magistrates are located.

### **Judicial Salaries:**

Commission members voted to recommend that the following initiative be introduced during the 2003 General Assembly:

#### 1) Salary schedules for each level of court

Level	Current Salary	Recommended Salary
Trial Court	\$90,000	\$109,200
Court of Appeals	\$110,000	\$130,200
Supreme Court	\$115,000	\$135,200

2) A permanent law providing that the Judiciary be included in the state's employee contingency plan which would allow the judiciary to receive raises along with other state employees in years in which the legislature does not enact pay raises for the judiciary.

3) A salary commission to address the needs of all statewide elected officials, legislators, and the judiciary.

**Re-authorization of the Commission on Courts:**

IC 33-1-15-8 has a sunset provision of June 30, 2003. The Commission members recommended by a voice vote that a bill be introduced that would change the expiration date to June 30, 2007.

**Review and Approval of Final Report:**

The Commission members reviewed the final report and approved it with amendments based on the Commission's actions at today's meeting.

The meeting adjourned at 12:30 p.m.

## ***Attachment A***

### **LEGISLATIVE SERVICES AGENCY**

#### **Office of Fiscal and Management Analysis**

**200 W. Washington Street, Suite 302**

**Indianapolis, Indiana 46204-2789**

**(317) 233-0696**

**(317) 232-2554 (FAX)**

### **MEMORANDUM**

To: Representative Kathy Richardson

From: Mark Goodpaster

Re: Effect of Postal Increases on Budgets of Clerks of the Circuit Court

Date: October 17, 2002

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You requested that I estimate what effect the recent increase in postage rates may have on the statewide budgets of the clerks of the circuit court. The following analysis and results should be considered to be a preliminary estimate of these additional costs. As more information becomes available, this analysis may need to be amended.

To make these estimates, four pieces of data need to be available:

- the number of filings
- the number of respondents to each filing
- the average number of mailings per respondent that occur with each filing
- the added cost of mailing.

Of these four factors, only the number of filings and the increase in postal rates are readily available. The number of respondents and the average number of mailings per respondent need to be estimated based on conversations with clerks of the court across the state.

The following shows the estimates that were made for the summary table:

The number of filings are reported in four major categories that are published annually in the Indiana Judicial Report. These include marriage dissolutions, all other civil filings, juvenile paternity cases and small claims cases. For the table below, I used filings from the 2001 Judicial Report.

The number of parties responding to a filing will depend on the type of case. Staff in clerks offices in Marion and Steuben Counties indicate that there is generally one respondent in marriage dissolutions, juvenile paternitys and small claims cases. For all other civil cases, the number of respondents may be as many as four.

**Memorandum**  
**Page 7**

The number of mailings per respondent will also vary by the type of case. Marriage dissolutions seem to require the least while small claims notices require the most. (These numbers may change when more information becomes available.)

Notices can be sent to responding parties either by certified mail or by sheriff. Currently, staff with whom I have spoken indicate that about 2/3's or 66% of the notices are sent by certified mail.

Finally, it is assumed that the average weight of these notices is one ounce. The current rate is \$4.42 for a certified letter with a return receipt while the prior rate was \$3.74. The difference is 68 cents, or an 18% increase.

Based on these assumptions and available information, the following table indicates that the additional costs for the clerks of the circuit court to send out certified mail at the increased rate would be preliminarily estimated at \$876,000.

<b>Estimating the Additional Costs for Certified Mail in Selected Type of Cases</b>										
Type of Case	Number of Filings		Number of Respondents in Case		Mailings per Responding Party		Percent Sent by Certified Mail		Added Cost for Certified Mail	Total Costs
All Other Civil Filings	148,763	x	4	x	2	x	66%	x	\$0.68	= \$534,119
Dissolutions	40,682	x	1	x	1	x	66%	x	\$0.68	= \$18,258
Small Claims	230,030	x	1	x	3	x	66%	x	\$0.68	= \$309,712
Juvenile Paternity	16,147	x	1	x	2	x	66%	x	\$0.68	= \$14,494
<b>Added Costs</b>										<b><u>\$876,583</u></b>

## ***Attachment B***

### Members

Sen. Richard Bray, Chairperson  
Sen. David Ford  
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Sen. Timothy Lanane  
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### LSA Staff:

Mark Goodpaster, Fiscal Analyst for the  
Commission  
Andrew Roesener, Attorney for the Commission

Authority: IC 33-1-15

To: Members of the Commission on Courts  
From: Mark Goodpaster  
Date: October 14, 2002  
Re: Update on Automated Record Keeping Fee and the Judicial Technology and Automation Program

Monies from this newly created court fee may play an important role in providing revenue for the court information project. This memo provides the Commission members with some background on the fee and the revenue the Division of State Court Administration has received from the State User Fee Fund for this project.

### **Brief History of Funding:**

#### *User Fee Fund Prior to 2001 General Assembly:*

The State User Fee Fund received revenue from seven different fees and distributed \$2,175,000 to eight different funds. Seven of these funds received a flat percentage while the Safe Schools Fund received the balance in the User Fee Account.

#### *HEA 1130-2001:*

This bill had five essential provisions that affected the technology program:

- It created an Automated Record Keeping Fee of \$2 to be assessed in all appropriate civil and criminal cases in courts of record and city and town courts in Indiana.
- It established the Judicial Technology and Automation Project Fund for financing the automation project. The fund is used for financing improvements in the

## ***Attachment B***

automation of information for the state court system.

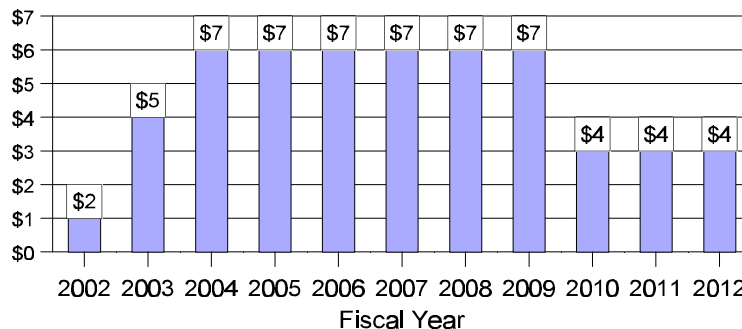
- The fee collected by the clerks is transferred to the State User Fee Fund.
- Assuming that more money would be deposited into the State User Fee Fund because of the Automated Record Keeping Fee, \$200,000 is now transferred twice a year out of the fund for the Safe Schools Fund. The amount that was distributed to the existing programs remained essentially the same.
- The balance was then transferred to the Judicial Technology and Automation Project.

*SEA 315 2002:*

this bill had two provisions which also affected the Judicial Technology and Automation Project:

- It mandated that the Automated Record Keeping Fee be paid by plaintiffs in Marion County Small Claims courts.
- It increased the Automated Record Keeping Fee from \$2 to \$5 for FY 2003, to \$7 for the period between FY 2004 and 2009 and reduces to \$4 after June 30, 2009.

The Automated Record Keeping Fee will increase to \$5 beginning in FY 2004 and be reduced to \$4 after FY 2009.



It was estimated that these two provisions could increase the revenue being deposited in the State User Fee Fund by \$3.3 million in FY 2003 and by \$5.4 million in FY 2004.

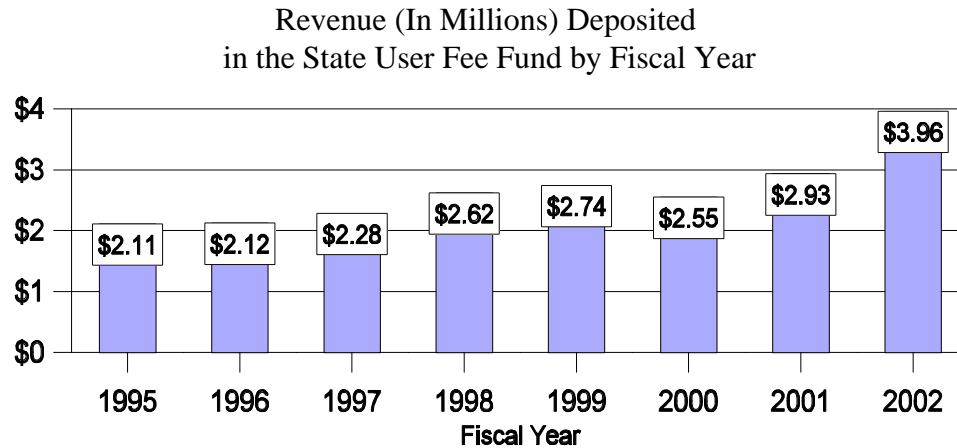
No changes were made in the distribution section of the State User Fee Fund.

### **Revenue Receipts in State User Fee Fund:**

The following chart displays the revenues (in millions) deposited in the State User Fee Fund from the eight fees that are deposited in the fund. FY 2002 had the highest growth in the State User Fee Fund's history for the fees that are collected. Because the eight fees that the courts assess are not reported separately, it is not possible to determine whether the increase in revenue in FY 2002 was due primarily to the added revenues generated by the Automation Record Keeping Fee or to the general increase in the other

## Attachment B

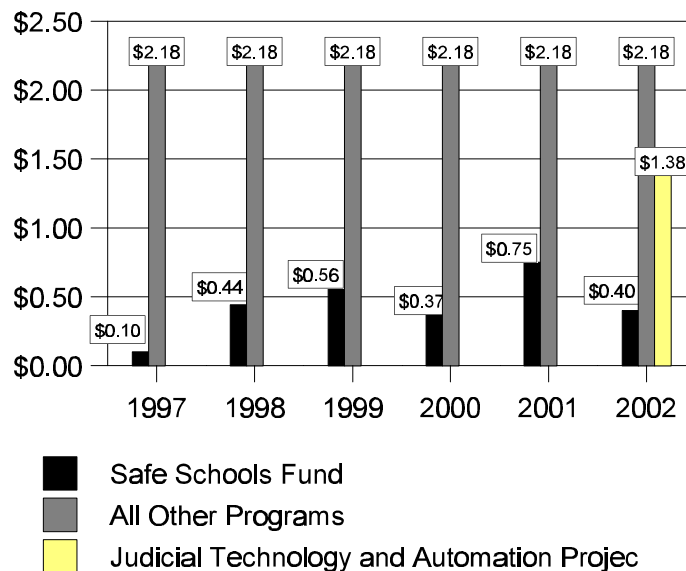
fees.



### Distributions to the Judicial Technology and Automation Fund:

The exhibit below shows the distribution of funding from the User Fee Fund for Fiscal Years 1996 through 2001. Between FY 1996 through 2001, the Safe Schools Fund received the residuals from the User Fee Fund. Beginning in FY 2002, the Safe Schools Fund receives a flat annual distribution of \$400,000 and the Judicial Technology and Automation Fund will receive the residuals from the State User Fee Fund. The Office of State Court Administration reports that the Judicial Technology and Automation Program received \$1.3 million for FY 2002. For the period between July 1 and December 31, 2001, it received \$455,483.92 and for the period between January 1 and June 30, 2002 it received \$924,169.47.

Distributions in Millions From State User Fee Fund  
for FY 1997 to FY 2002



## ***Attachment B***

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

### **HOUSE ENROLLED ACT No. 1130**

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AN ACT to amend the Indiana Code concerning courts and to make an appropriation.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 33-2.1-7-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 3. (a) The division of state court administration shall do the following:

- (1) Examine the administrative and business methods and systems employed in the offices of the clerks of court and other offices related to and serving the courts and make recommendations for necessary improvement.
- (2) Collect and compile statistical data and other information on the judicial work of the courts in the state. All justices of the supreme court, judges of the court of appeals, judges of all trial courts in the state, and any city or town courts, whether having general or special jurisdiction, court clerks, court reporters, and other officers and employees of the courts shall, upon notice by the executive director and in compliance with procedures prescribed by the executive director, furnish the executive director such information as is requested concerning the nature and volume of judicial business. The information reports shall include, but not be limited to, the volume, condition, and type of business conducted by the courts, the methods of procedure therein, the work accomplished by the courts, the receipt and

**HEA 1130 — Concur**



## **Attachment B**

expenditure of public money by and for the operation of the courts, and the methods of disposition or termination of cases.

(3) Prepare and publish reports, not less than one (1) nor more than two (2) times per year, on the nature and volume of judicial work performed by the courts as determined by the information required in subdivision (2).

(4) Serve the judicial nominating commission and the judicial qualifications commission in the performance by the commissions of their statutory and constitutional functions.

(5) Administer the civil legal aid fund as required by IC 33-2.1-11.

**(6) Administer the judicial technology and automation project fund established by section 10 of this chapter.**

(b) All forms to be used in the gathering of data must be approved by the supreme court, and shall be distributed to all judges and clerks prior to the start of each period for which reports are required.

SECTION 2. IC 33-2.1-7-10 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 10. (a) The judicial technology and automation project fund is established for the purpose of funding the judicial technology and automation project. The division of state court administration shall administer the fund. The fund consists of the following:**

**(1) Deposits made under IC 33-19-9-4.**

**(2) Other appropriations made by the general assembly.**

**(3) Grants and gifts designated for the fund or the judicial technology and automation project.**

**(b) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested.**

**(c) Money in the fund at the end of a state fiscal year does not revert to the state general fund.**

**(d) There is annually appropriated to the division of state court administration the money in the fund for the judicial technology and automation project.**

SECTION 3. IC 33-11.6-4-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 15. (a) The costs consist of:**

**(1) a township docket fee equal to five dollars (\$5) plus forty-five percent (45%) of the infraction or ordinance violation costs fee under IC 33-19-5-2;**

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## **Attachment B**

- (2) bailiff's service of process by registered or certified mail fee of ~~six~~ **thirteen** dollars (~~\$6~~) (**\$13**) for each service;
- (3) the cost for the personal service of process by the bailiff or other process server in the amount of ~~eight~~ **thirteen** dollars (~~\$8~~) (**\$13**) for each service; ~~with the exception that personal service to execute a warrant for a protective order under IC 34-26-2 (or IC 34-4-5.1 before its repeal) shall cost a fee of twelve dollars (\$12) and writs of restitution and writs of replevin shall cost a fee of twelve dollars (\$12);~~
- (4) witness fees, if any, in the amount provided by IC 33-19-1-6 to be taxed and charged in the circuit court of the county; and
- (5) a redocketing fee, if any, of five dollars (\$5).

The docket fee and the cost for the initial service of process shall be paid upon the institution of each case. The cost of service rendered subsequent to the initial service shall be assessed and paid after such service has been made, and the cost of witness fees shall be paid before the witnesses are called.

(b) If the amount of the township docket fee computed under subsection (a)(1) is not equal to a whole number, the amount shall be rounded to the next highest whole number.

SECTION 4. IC 33-19-5-1, AS AMENDED BY HEA 1856-2001, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. (a) For each action that results in a felony conviction under IC 35-50-2 or a misdemeanor conviction under IC 35-50-3, the clerk shall collect from the defendant a criminal costs fee of one hundred twenty dollars (\$120).

(b) In addition to the criminal costs fee collected under this section, the clerk shall collect from the defendant the following fees if they are required under IC 33-19-6:

- (1) A document fee.
- (2) A marijuana eradication program fee.
- (3) An alcohol and drug services program user fee.
- (4) A law enforcement continuing education program fee.
- (5) A drug abuse, prosecution, interdiction, and correction fee.
- (6) An alcohol and drug countermeasures fee.
- (7) A child abuse prevention fee.
- (8) A domestic violence prevention and treatment fee.
- (9) A highway work zone fee.
- (10) A deferred prosecution fee (IC 33-19-6-16.2).
- (11) A judicial salaries fee (IC 33-19-6-18).
- (12) **A document storage fee (IC 33-19-6-18.1).**

**HEA 1130 — Concur**



## **Attachment B**

### **(13) An automated record keeping fee (IC 33-19-6-19).**

(c) Instead of the criminal costs fee prescribed by this section, the clerk shall collect a pretrial diversion program fee if an agreement between the prosecuting attorney and the accused person entered into under IC 33-14-1-7 requires payment of those fees by the accused person. The pretrial diversion program fee is:

- (1) an initial user's fee of fifty dollars (\$50); and
- (2) a monthly user's fee of ten dollars (\$10) for each month that the person remains in the pretrial diversion program.

(d) The clerk shall transfer to the county auditor or city or town fiscal officer the following fees, within thirty (30) days after they are collected, for deposit by the auditor or fiscal officer in the appropriate user fee fund established under IC 33-19-8:

- (1) The pretrial diversion fee.
- (2) The marijuana eradication program fee.
- (3) The alcohol and drug services program user fee.
- (4) The law enforcement continuing education program fee.

(e) Unless otherwise directed by a court, if a clerk collects only part of a criminal costs fee from a defendant under this section, the clerk shall distribute the partial payment of the criminal costs fee as follows:

- (1) First, the clerk shall apply the partial payment to general court costs.
- (2) Second, if there is money remaining after the partial payment is applied to general court costs under subdivision (1), the clerk shall distribute the partial payment for deposit in the appropriate county user fee fund.
- (3) Third, if there is money remaining after distribution under subdivision (2), the clerk shall distribute the partial payment for deposit in the state user fee fund.
- (4) Fourth, if there is money remaining after distribution under subdivision (3), the clerk shall distribute the partial payment to any other applicable user fee fund.
- (5) Fifth, if there is money remaining after distribution under subdivision (4), the clerk shall apply the partial payment to any outstanding fines owed by the defendant.

SECTION 5. IC 33-19-5-2, AS AMENDED BY HEA 1856-2001, SECTION 8, IS AMENDED TO READ AS FOLLOWS  
[EFFECTIVE JULY 1, 2001]: Sec. 2. (a) Except as provided in subsections (d) and (e), for each action that results in a judgment:

- (1) for a violation constituting an infraction; or

**HEA 1130 — Concur**



## ***Attachment B***

(2) for a violation of an ordinance of a municipal corporation (as defined in IC 36-1-2-10);  
the clerk shall collect from the defendant an infraction or ordinance violation costs fee of seventy dollars (\$70).

(b) In addition to the infraction or ordinance violation costs fee collected under this section, the clerk shall collect from the defendant the following fees if they are required under IC 33-19-6:

- (1) A document fee.
- (2) An alcohol and drug services program user fee.
- (3) A law enforcement continuing education program fee.
- (4) An alcohol and drug countermeasures fee.
- (5) A highway work zone fee.
- (6) A deferred prosecution fee (IC 33-19-6-16.2).
- (7) A judicial salaries fee (IC 33-19-6-18).
- (8) A document storage fee (IC 33-19-6-18.1).**
- (9) An automated record keeping fee (IC 33-19-6-19).**

(c) The clerk shall transfer to the county auditor or fiscal officer of the municipal corporation the following fees, within thirty (30) days after they are collected, for deposit by the auditor or fiscal officer in the user fee fund established under IC 33-19-8:

- (1) The alcohol and drug services program user fee.
- (2) The law enforcement continuing education program fee.
- (3) The deferral program fee.

(d) The defendant is not liable for any ordinance violation costs fee in an action in which:

- (1) the defendant was charged with an ordinance violation subject to IC 33-6-3;
- (2) the defendant denied the violation under IC 33-6-3-2;
- (3) proceedings in court against the defendant were initiated under IC 34-28-5 (or IC 34-4-32 before its repeal); and
- (4) the defendant was tried and the court entered judgment for the defendant for the violation.

(e) Instead of the infraction or ordinance violation costs fee prescribed by subsection (a), the clerk shall collect a deferral program fee if an agreement between a prosecuting attorney or an attorney for a municipal corporation and the person charged with a violation entered into under IC 34-28-5-1 (or IC 34-4-32-1 before its repeal) requires payment of those fees by the person charged with the violation. The deferral program fee is:

- (1) an initial user's fee not to exceed fifty-two dollars (\$52);  
and

**HEA 1130 — Concur**



## ***Attachment B***

(2) a monthly user's fee not to exceed ten dollars (\$10) for each month the person remains in the deferral program.

SECTION 6. IC 33-19-5-3, AS AMENDED BY HEA 1856-2001, SECTION 9, IS AMENDED TO READ AS FOLLOWS

[EFFECTIVE JULY 1, 2001]: Sec. 3. (a) For each action filed under:

(1) IC 31-34 or IC 31-37 (delinquent children and children in need of services); or

(2) IC 31-14 (paternity);

the clerk shall collect a juvenile costs fee of one hundred twenty dollars (\$120).

(b) In addition to the juvenile costs fee collected under this section, the clerk shall collect the following fees if they are required under IC 33-19-6:

(1) A document fee.

(2) A marijuana eradication program fee.

(3) An alcohol and drug services program user fee.

(4) A law enforcement continuing education program fee.

(5) An alcohol and drug countermeasures fee.

(6) A judicial salaries fee (IC 33-19-6-18).

**(7) A document storage fee (IC 33-19-6-18.1).**

**(8) An automated record keeping fee (IC 33-19-6-19).**

(c) The clerk shall transfer to the county auditor or city or town fiscal officer the following fees, within thirty (30) days after they are collected, for deposit by the auditor or fiscal officer in the appropriate user fee fund established under IC 33-19-8:

(1) The marijuana eradication program fee.

(2) The alcohol and drug services program user fee.

(3) The law enforcement continuing education program fee.

SECTION 7. IC 33-19-5-4, AS AMENDED BY HEA 1856-2001, SECTION 10, IS AMENDED TO READ AS FOLLOWS

[EFFECTIVE JULY 1, 2001]: Sec. 4. (a) For each civil action except:

(1) proceedings to enforce a statute defining an infraction under IC 34-28-5-4 (or IC 34-4-32-4 before its repeal);

(2) proceedings to enforce an ordinance under IC 34-28-5-4 (or IC 34-4-32-4 before its repeal);

(3) proceedings in juvenile court under IC 31-34 or IC 31-37;

(4) proceedings in paternity under IC 31-14;

(5) proceedings in small claims court under IC 33-11.6; and

(6) proceedings in actions under section 6 of this chapter;

**HEA 1130 — Concur**



## **Attachment B**

the clerk shall collect from the party filing the action a civil costs fee of one hundred dollars (\$100), except as provided in subsection (b).

(b) For each proceeding for the issuance of a protective order under IC 34-26-2:

(1) the clerk shall initially collect thirty-five dollars (\$35) of the civil costs fee from the party that filed the action or the court may waive the initial thirty-five dollars (\$35) of the civil costs fee for the party that filed the action; and

(2) upon disposition of the protective order petition under IC 34-26-2, the court may order that:

(A) the remainder of the civil costs fee, in the amount of sixty-five dollars (\$65), be assessed against the respondent in the action as provided in IC 34-26-2-4 or against the party that filed the action; and

(B) the initial thirty-five dollar (\$35) civil costs fee be reimbursed by the respondent in the action to the party that filed the action or assessed against the respondent in the action as provided in IC 34-26-2-4.

(c) In addition to the civil costs fee collected under this section, the clerk shall collect the following fees if they are required under IC 33-19-6:

(1) A document fee.

(2) A support and maintenance fee.

(3) A judicial salaries fee (IC 33-19-6-18).

**(4) A document storage fee (IC 33-19-6-18.1).**

**(5) An automated record keeping fee (IC 33-19-6-19).**

SECTION 8. IC 33-19-5-5, AS AMENDED BY HEA 1856-2001, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 5. (a) For each small claims action the clerk shall collect from the party filing the action a small claims costs fee of thirty-five dollars (\$35).

(b) In addition to a small claims costs fee collected under this section, the clerk shall collect the following fees if they are required under IC 33-19-6:

(1) A document fee.

(2) A judicial salaries fee (IC 33-19-6-18).

**(3) A document storage fee (IC 33-9-6-18.1).**

**(4) An automated record keeping fee (IC 33-19-6-19).**

SECTION 9. IC 33-19-5-6, AS AMENDED BY HEA 1856-2001, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 6. (a) Except as provided under

**HEA 1130 — Concur**



## **Attachment B**

subsection (c), for each action filed under:

- (1) IC 6-4.1-5 (determination of inheritance tax);
- (2) IC 29 (probate); and
- (3) IC 30 (trusts and fiduciaries);

the clerk shall collect from the party filing the action a probate costs fee of one hundred twenty dollars (\$120).

(b) In addition to the probate costs fee collected under this section, the clerk shall collect from the party filing the action the following fees if they are required under IC 33-19-6:

- (1) A document fee.
- (2) A judicial salaries fee (IC 33-19-6-18).
- (3) A document storage fee (IC 33-19-6-18.1).**
- (4) An automated record keeping fee (IC 33-19-6-19).**

(c) A clerk may not collect a court costs fee for the filing of the following exempted actions:

- (1) Petition to open a safety deposit box.
- (2) Filing an inheritance tax return, unless proceedings other than the court's approval of the return become necessary.
- (3) Offering a will for probate under IC 29-1-7, unless proceedings other than admitting the will to probate become necessary.

SECTION 10. IC 33-19-6-1.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1.5. (a) Each clerk shall establish a clerk's record perpetuation fund. The clerk shall deposit in the fund all:

- (1) revenue received by the clerk for the transmitting of documents by facsimile machine to a person under IC 5-14-3;**
- and**
- (2) document storage fees required under section 18.1 of this chapter.**

(b) The clerk may use any money in the fund for the following purposes:

- (1) The preservation of records.
- (2) The improvement of record keeping systems and equipment.

SECTION 11. IC 33-19-6-18.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 18.1. (a) This section applies to all civil, criminal, infraction, and ordinance violation actions.**

**(b) The clerk shall collect a document storage fee of two dollars (\$2).**

**HEA 1130 — Concur**



## **Attachment B**

SECTION 12. IC 33-19-6-19 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 19. (a) This section applies to all civil, criminal, infraction, and ordinance violation actions.**

**(b) The clerk shall collect an automated record keeping fee of two dollars (\$2).**

SECTION 13. IC 33-19-7-1, AS AMENDED BY HEA 1856-2001, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 1. (a) The clerk of a circuit court shall semiannually distribute to the auditor of state as the state share for deposit in the state general fund seventy percent (70%) of the amount of fees collected under the following:**

- (1) IC 33-19-5-1(a) (criminal costs fees).
- (2) IC 33-19-5-2(a) (infraction or ordinance violation costs fees).
- (3) IC 33-19-5-3(a) (juvenile costs fees).
- (4) IC 33-19-5-4(a) (civil costs fees).
- (5) IC 33-19-5-5(a) (small claims costs fees).
- (6) IC 33-19-5-6(a) (probate costs fees).
- (7) IC 33-19-6-16.2 (deferred prosecution fees).

**(b) The clerk of a circuit court shall semiannually distribute to the auditor of state for deposit in the state user fee fund established under IC 33-19-9-2 the following:**

- (1) Twenty-five percent (25%) of the drug abuse, prosecution, interdiction, and correction fees collected under IC 33-19-5-1(b)(5).
- (2) Twenty-five percent (25%) of the alcohol and drug countermeasures fees collected under IC 33-19-5-1(b)(6), IC 33-19-5-2(b)(4), and IC 33-19-5-3(b)(5).
- (3) Fifty percent (50%) of the child abuse prevention fees collected under IC 33-19-5-1(b)(7).
- (4) One hundred percent (100%) of the domestic violence prevention and treatment fees collected under IC 33-19-5-1(b)(8).
- (5) One hundred percent (100%) of the highway work zone fees collected under IC 33-19-5-1(b)(9) and IC 33-19-5-2(b)(5).
- (6) One hundred percent (100%) of the safe schools fee collected under IC 33-19-6-16.3.
- (7) One hundred percent (100%) of the automated record keeping fee (IC 33-19-6-19).**

**(c) The clerk of a circuit court shall monthly distribute to the**

**HEA 1130 — Concur**



## **Attachment B**

county auditor the following:

- (1) Seventy-five percent (75%) of the drug abuse, prosecution, interdiction, and correction fees collected under IC 33-19-5-1(b)(5).
- (2) Seventy-five percent (75%) of the alcohol and drug countermeasures fees collected under IC 33-19-5-1(b)(6), IC 33-19-5-2(b)(4), and IC 33-19-5-3(b)(5).

The county auditor shall deposit fees distributed by a clerk under this subsection into the county drug free community fund established under IC 5-2-11.

(d) The clerk of a circuit court shall monthly distribute to the county auditor fifty percent (50%) of the child abuse prevention fees collected under IC 33-19-5-1(b)(8). The county auditor shall deposit fees distributed by a clerk under this subsection into the county child advocacy fund established under IC 12-17-17.

(e) The clerk of a circuit court shall semiannually distribute to the auditor of state for deposit in the state general fund one hundred percent (100%) of the judicial salaries fee.

SECTION 14. IC 33-19-7-4, AS AMENDED BY HEA 1856-2001, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 4. (a) The clerk of a city or town court shall semiannually distribute to the auditor of state as the state share for deposit in the state general fund fifty-five percent (55%) of the amount of fees collected under the following:

- (1) IC 33-19-5-1(a) (criminal costs fees).
- (2) IC 33-19-5-2(a) (infraction or ordinance violation costs fees).
- (3) IC 33-19-5-4(a) (civil costs fees).
- (4) IC 33-19-5-5 (small claims costs fees).
- (5) IC 33-19-6-16.2 (deferred prosecution fees).

(b) Once each month the city or town fiscal officer shall distribute to the county auditor as the county share twenty percent (20%) of the amount of fees collected under the following:

- (1) IC 33-19-5-1(a) (criminal costs fees).
- (2) IC 33-19-5-2(a) (infraction or ordinance violation costs fees).
- (3) IC 33-19-5-4(a) (civil costs fees).
- (4) IC 33-19-5-5 (small claims costs fees).
- (5) IC 33-19-6-16.2 (deferred prosecution fees).

(c) The city or town fiscal officer shall retain twenty-five percent (25%) as the city or town share of the fees collected under the

**HEA 1130 — Concur**



## **Attachment B**

following:

- (1) IC 33-19-5-1(a) (criminal costs fees).
  - (2) IC 33-19-5-2(a) (infraction or ordinance violation costs fees).
  - (3) IC 33-19-5-4(a) (civil costs fees).
  - (4) IC 33-19-5-5 (small claims costs fees).
  - (5) IC 33-19-6-16.2 (deferred prosecution fees).
- (d) The clerk of a city or town court shall semiannually distribute to the auditor of state for deposit in the state user fee fund established under IC 33-19-9 the following:
- (1) Twenty-five percent (25%) of the drug abuse, prosecution, interdiction, and corrections fees collected under IC 33-19-5-1(b)(5).
  - (2) Twenty-five percent (25%) of the alcohol and drug countermeasures fees collected under IC 33-19-5-1(b)(6), IC 33-19-5-2(b)(4), and IC 33-19-5-3(b)(5).
  - (3) One hundred percent (100%) of the highway work zone fees collected under IC 33-19-5-1(b)(9) and IC 33-19-5-2(b)(5).
  - (4) One hundred percent (100%) of the safe schools fee collected under IC 33-19-6-16.3.
  - (5) One hundred percent (100%) of the automated record keeping fee (IC 33-19-6-19).**
- (e) The clerk of a city or town court shall monthly distribute to the county auditor the following:
- (1) Seventy-five percent (75%) of the drug abuse, prosecution, interdiction, and corrections fees collected under IC 33-19-5-1(b)(5).
  - (2) Seventy-five percent (75%) of the alcohol and drug countermeasures fees collected under IC 33-19-5-1(b)(6), IC 33-19-5-2(b)(4), and IC 33-19-5-3(b)(5).
- The county auditor shall deposit fees distributed by a clerk under this subsection into the county drug free community fund established under IC 5-2-11.
- (f) The clerk of a city or town court shall semiannually distribute to the auditor of state for deposit in the state general fund one hundred percent (100%) of the judicial salaries fee.

SECTION 15. IC 33-19-9-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 4. (a) The treasurer of state shall semiannually distribute one million ~~eighty-seven two hundred eighty-eight~~ thousand ~~five hundred~~ dollars (~~\$1,087,500~~) (**\$1,288,000**) of the amounts transferred to the state fund under

**HEA 1130 — Concur**



## ***Attachment B***

section 3 of this chapter as follows:

- (1) ~~Seventeen~~ **Fourteen** and ~~seventy-three~~ **ninety-eight** hundredths percent (~~17.73%~~) (**14.98%**) shall be deposited into the alcohol and drug countermeasures fund established under IC 9-27-2-11.
- (2) ~~Nine~~ **Eight** and ~~ninety-seven~~ **forty-two** hundredths percent (~~9.97%~~) (**8.42%**) shall be deposited into the drug interdiction fund established under IC 10-1-8-2.
- (3) ~~Five~~ **Four** and ~~fifty-four~~ **sixty-eight** hundredths percent (~~5.54%~~) (**4.68%**) shall be deposited into the drug prosecution fund established under IC 33-14-8-5.
- (4) ~~Six~~ **Five** and ~~sixty-five~~ **sixty-two** hundredths percent (~~6.65%~~) (**5.62%**) shall be deposited into the corrections drug abuse fund established under IC 11-8-2-11.
- (5) ~~Twenty-six~~ **Twenty-two** and ~~sixty-hundredths~~ **forty-seven hundredths** percent (~~26.60%~~) (**22.47%**) shall be deposited into the state drug free communities fund established by IC 5-2-10-2.
- (6) ~~Nine~~ **Seven** and ~~forty-five~~ **ninety-eight** hundredths percent (~~9.45%~~) (**7.98%**) shall be distributed to the Indiana department of transportation for use under IC 8-23-2-15.
- (7) ~~Twenty-four~~ **Twenty** and ~~six-hundredths~~ **thirty-two hundredths** percent (~~24.06%~~) (**20.32%**) shall be deposited in the family violence and victim assistance fund established by IC 12-18-5-2.
- (b) (8) The treasurer of state shall semiannually distribute the amount remaining after the distributions in subsection (a) to **Fifteen and fifty-three hundredths percent (15.53%) shall be deposited in** the Indiana safe schools fund established by IC 5-2-10.1.
- (b) The treasurer of state shall semiannually distribute the amount remaining after the distributions in subsection (a) to the judicial technology and automation project fund established by IC 33-2.1-7-10.

HEA 1130 — Concur



## ***Attachment B***

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

### **SENATE ENROLLED ACT No. 315**

---

AN ACT to amend the Indiana Code concerning courts and court officers.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 33-11.6-4-15, AS AMENDED BY P.L.280-2001, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 15. (a) The costs consist of:

- (1) a township docket fee equal to five dollars (\$5) plus forty-five percent (45%) of the infraction or ordinance violation costs fee under IC 33-19-5-2;
- (2) bailiff's service of process by registered or certified mail fee of thirteen dollars (\$13) for each service;
- (3) the cost for the personal service of process by the bailiff or other process server in the amount of thirteen dollars (\$13) for each service;
- (4) witness fees, if any, in the amount provided by IC 33-19-1-6 to be taxed and charged in the circuit court of the county; ~~and~~
- (5) a redocketing fee, if any, of five dollars (\$5);
- (6) a document storage fee under IC 33-19-6-18.1;**
- (7) an automated record keeping fee under IC 33-19-6-19;**
- and**
- (8) a late fee, if any, under IC 33-19-6-20.**

SEA 315 — CC 1



## ***Attachment B***

The docket fee and the cost for the initial service of process shall be paid upon the institution of each case. The cost of service rendered subsequent to the initial service shall be assessed and paid after such service has been made, and the cost of witness fees shall be paid before the witnesses are called.

(b) If the amount of the township docket fee computed under subsection (a)(1) is not equal to a whole number, the amount shall be rounded to the next highest whole number.

SECTION 2. IC 33-11.6-9-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1. ~~Handling of Funds.~~ (a) Payment for all costs and other purposes made as a result of proceedings in a division of the small claims court shall be to the \_\_\_\_\_ County Small Claims Court \_\_\_\_\_ Division (with the name of the county and township inserted). The court shall issue a receipt, for all monies received, on a form numbered serially in duplicate. All township docket fees **and late fees** received by the court shall be paid to the township trustees at the close of each month.

**(b) The court shall:**

**(1) semiannually distribute to the auditor of the state all automated record keeping fees received by the court for deposit in the state user fee fund established under IC 33-19-9; and**

**(2) monthly distribute to the county auditor all document storage fees received by the court. The county auditor shall deposit fees distributed under this subdivision into the clerk's record perpetuation fund under IC 33-19-6-1.5.**

SECTION 3. IC 33-19-6-19, AS ADDED BY P.L.183-2001, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 19. (a) This section applies to all civil, criminal, infraction, and ordinance violation actions.

(b) The clerk shall collect an automated record keeping fee of:

**(1) ~~two five~~ five dollars (\$2): (\$5) before July 1, 2003;**

**(2) seven dollars (\$7) after June 30, 2003, and before July 1, 2009; and**

**(3) four dollars (\$4) after June 30, 2009.**

SECTION 4. IC 33-19-6-20, AS ADDED BY P.L.280-2001, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 20. (a) **Except as provided in subsection (e),** this section applies in each action in which a defendant:

(1) is found, in a court that has a local court rule imposing a



## ***Attachment B***

late payment fee under this section, to have:

- (A) committed a crime;
  - (B) violated a statute defining an infraction;
  - (C) violated an ordinance of a municipal corporation; or
  - (D) committed a delinquent act;
- (2) is required to pay:
- (A) court costs, including fees;
  - (B) a fine; or
  - (C) a civil penalty;
- (3) is not determined by the court imposing the court costs, fine, or civil penalty to be indigent; and
- (4) fails to pay to the clerk the costs, fine, or civil penalty in full before the later of the following:
- (A) The end of the business day on which the court enters the conviction or judgment.
  - (B) The end of the period specified in a payment schedule set for the payment of court costs, fines, and civil penalties under rules adopted for the operation of the court.

(b) A court may adopt a local rule to impose a late payment fee under this section on defendants described in subsection (a).

(c) Subject to subsection (d), the clerk of a court that adopts a local rule imposing a late payment fee under this section shall collect a late payment fee of twenty-five dollars (\$25) from a defendant described in subsection (a).

(d) Notwithstanding IC 33-19-2-2, a court may suspend a late payment fee if the court finds that the defendant has demonstrated good cause for failure to make a timely payment of court costs, a fine, or a civil penalty.

**(e) A plaintiff or defendant in an action under IC 33-11.6 shall pay a late fee of twenty-five dollars (\$25) if the plaintiff or defendant:**

- (1) is required to pay court fees or costs under IC 33-11.6-4-15;**
- (2) is not determined by the court imposing the court costs to be indigent; and**
- (3) fails to pay the costs in full before the later of the following:**
  - (A) The end of the business day on which the court enters the judgment.**
  - (B) The end of the period specified in a payment schedule set for the payment of court costs under rules adopted for the operation of the court.**



**A court may suspend a late payment fee if the court finds that the plaintiff or defendant has demonstrated good cause for failure to make timely payment of the fee.**

**SECTION 5. [EFFECTIVE JULY 1, 2002] IC 33-11.6-4-15, as amended by this act, applies only to small claims actions initiated after June 30, 2002.**

## ***Attachment C***

### Members

Sen. Richard Bray, Chairperson  
Sen. David Ford  
Sen. William Alexa  
Sen. Timothy Lanane  
Rep. Robert Kuzman  
Rep. Dale Sturtz  
Rep. Ralph Ayres  
Rep. Kathy Richardson  
Justice Randall T. Shepard  
Timothy Curley  
Ernest Yelton  
David Lewis  
Sarah Taylor



## **COMMISSION ON COURTS**

***Legislative Services Agency  
200 West Washington Street, Suite 301  
Indianapolis, Indiana 46204-2789  
Tel: (317) 233-0696 Fax: (317) 232-2554***

### LSA Staff:

Mark Goodpaster, Fiscal Analyst for the  
Commission  
Andrew Roesener, Attorney for the Commission

Authority: IC 33-1-15

To: Members of Commission on Courts  
From: Mark Goodpaster  
Date: October 9, 2002  
Re: Update on Court Fees and Judicial Salaries

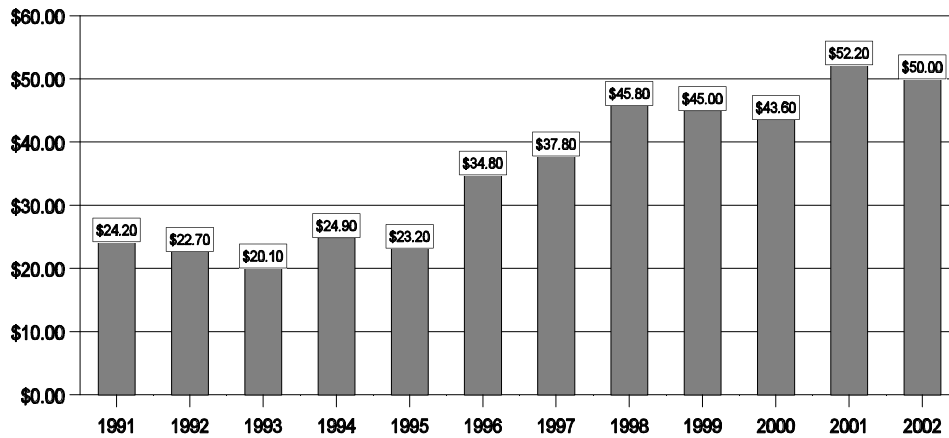
No fund is specifically earmarked for paying the salaries of court officers. These salaries are paid from the State General Fund. At the same time, the court fees charged under IC 33-19-5 have historically been linked to the salaries of the court officers. The revenue proceeds collected from court fees are deposited in the State General Fund, and from there, salaries are paid to court officers. Most recently, in 1995 and 1997, P.L. 279 and P.L. 280 increased the salaries of court officers and increased court fees to pay for these salary increases.

In the following memo, I provide an overview of the revenue collected from court fees and deposited in the State General Fund, take into account the transfers that are made from the fund to other court related programs at the county level, and compare these net revenues to the expenditures that have been made for the salaries of court officers. I then estimate the additional expenditures associated with the salary increase proposed by the Indiana Judges Association and estimate the additional increase in fees that would be needed to pay for the increase in salaries.

1) ***Revenue collected from court fees between FY 1991 and FY 2002 reported by the State Auditor:*** Revenues were relatively flat between 1991 and 1995. The increase in court fee revenue since 1995 can be explained by enactment of PL 279 and PL 280. These bills increased both court fees and the share of court fee revenue that the state receives.

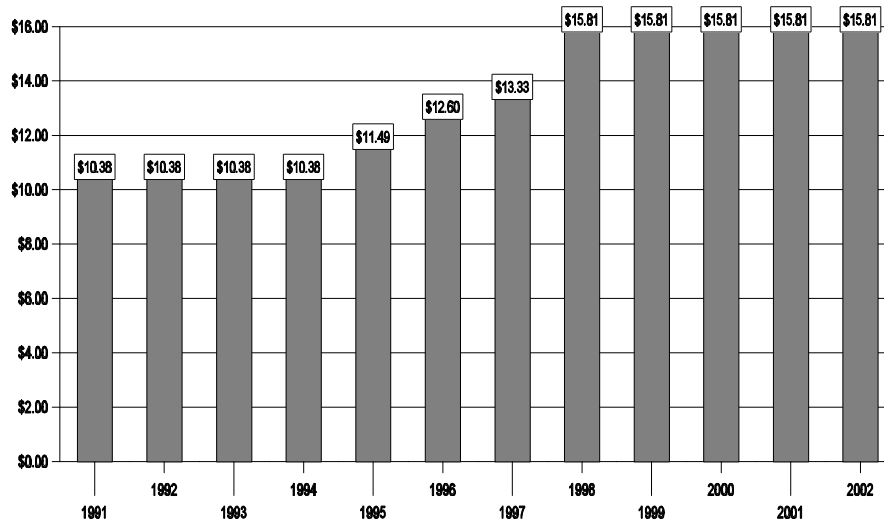
## Attachment C

General Fund revenues (in millions) from court fees  
between CY 1991 and CY 2002.



2) **Available net revenue after semi annual transfers:** Not all money generated from court fees remains in the State General Fund. Statutory distributions have been made to eight court related programs, and the Public Defense Fund under IC 33-19-7-5 on June 30 and December 31 of each year.

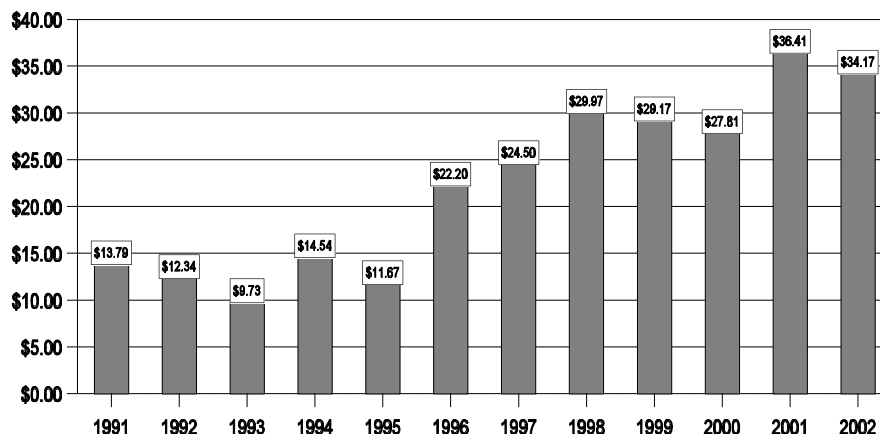
Revenue (in millions) annually transferred from the State General  
Fund to Court-Related Programs and Public Defense Fund



After taking into account these transfers, the net revenue is shown for each of the past twelve years.

## Attachment C

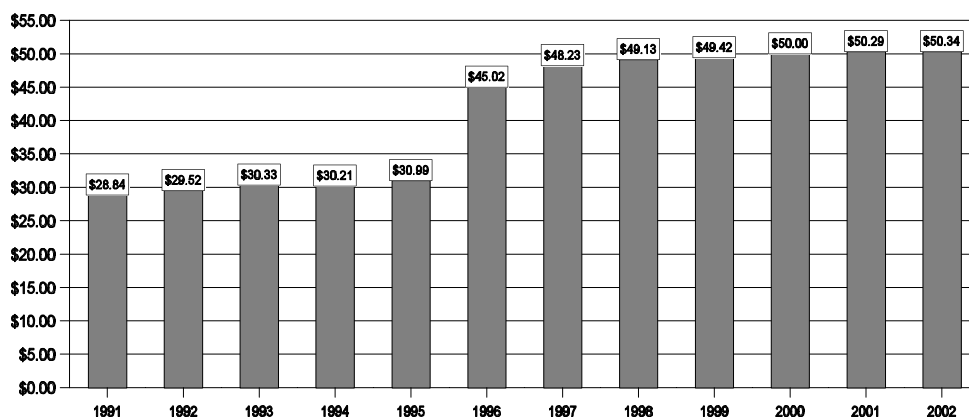
Net Revenues in State General Fund (In Millions)  
After Adjustments for Transfers to Court-related Programs



3) **Salary Expenditures for Judicial Officers Between 1990 and 2001:** Judicial officers paid by the State General Fund include all judges, magistrates, juvenile court magistrates, prosecuting attorneys, and chief deputy prosecuting attorneys. The salaries of trial court judges and full-time prosecuting attorneys are the same. The salaries of magistrates are 80% of the salaries of trial court judges. The salaries of deputy prosecuting attorneys are a percentage of the salaries of prosecuting attorneys.

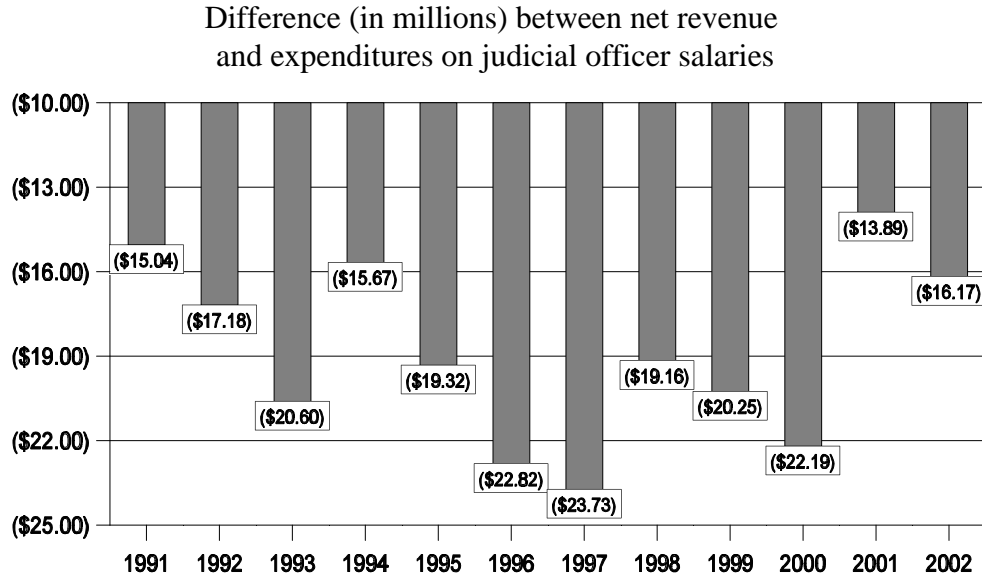
Like court fees, the salaries for judicial officers stayed relatively flat between 1991 and 1995 and began increasing in 1996 salary expenditures increased due to salary increases enacted into law in 1995 and 1997 and because courts and magistrate positions created by the General Assembly in 1995 and 1999.

Salary Expenditures (In Millions) for Judicial Officers

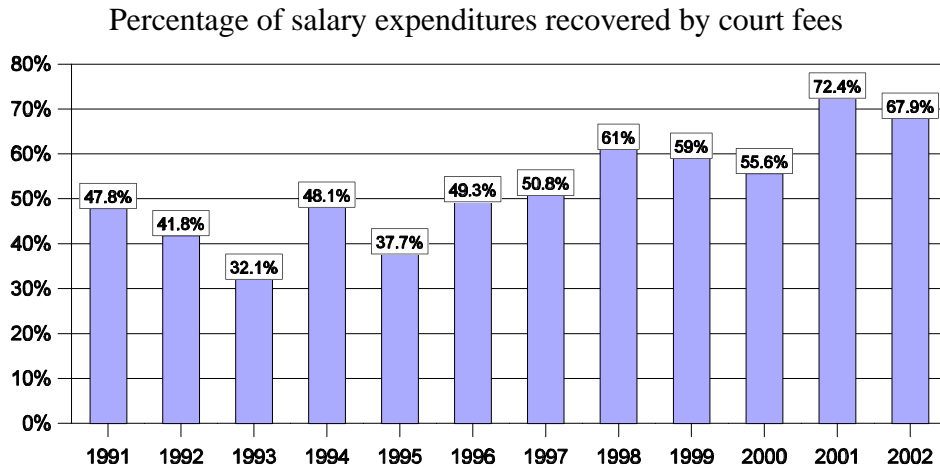


4) **Salary expenditures and net revenues from the State General Fund:** Revenues from court fees pay for a large portion of the salaries of judicial officers. The following chart shows the salary expenditures that were paid through the State General Fund after taking into account the salary expenditures paid by the court fees that are deposited in the State General fund.

## Attachment C

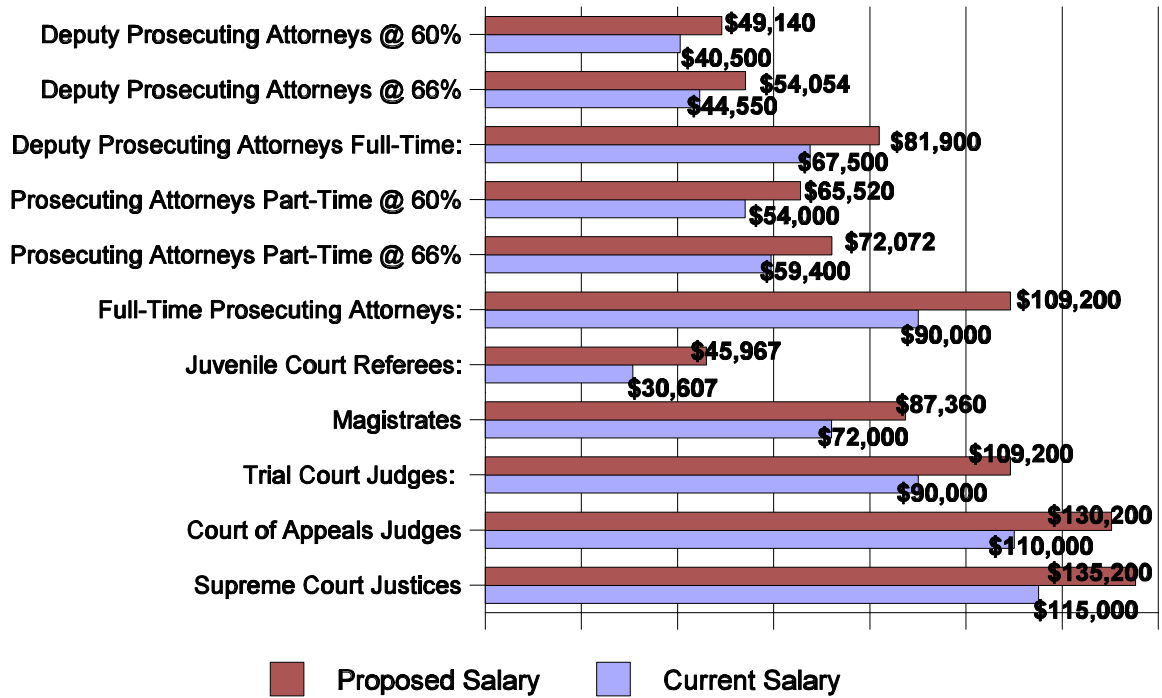


The following shows the percentage of salary expenditures that are covered by revenues that the state receives from court fees. Since 1995, revenue from court fees have begun to offset an increasing proportion of salary expenditures.

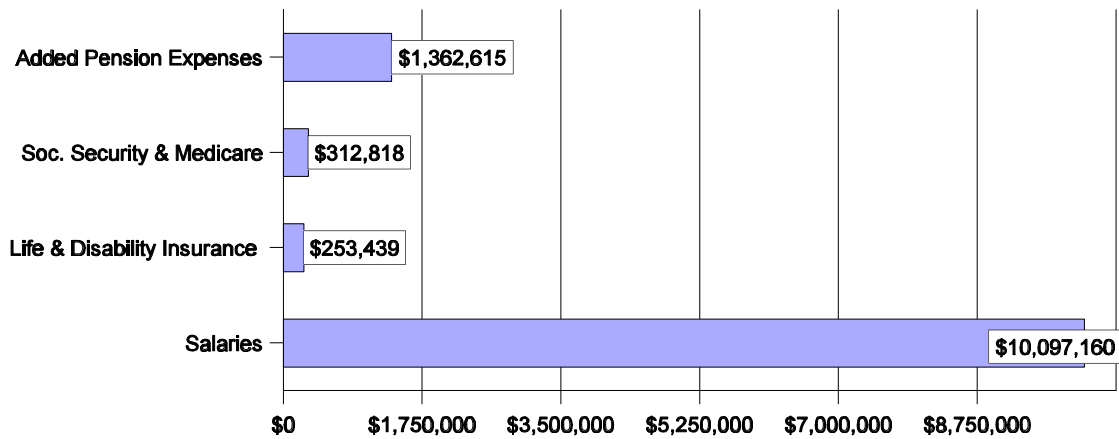


5) **Estimated expenditures to increase salaries of court officers:** The following shows the salaries as proposed by the Indiana Judges Association at the September 27<sup>th</sup> meeting of the Commission on Courts.

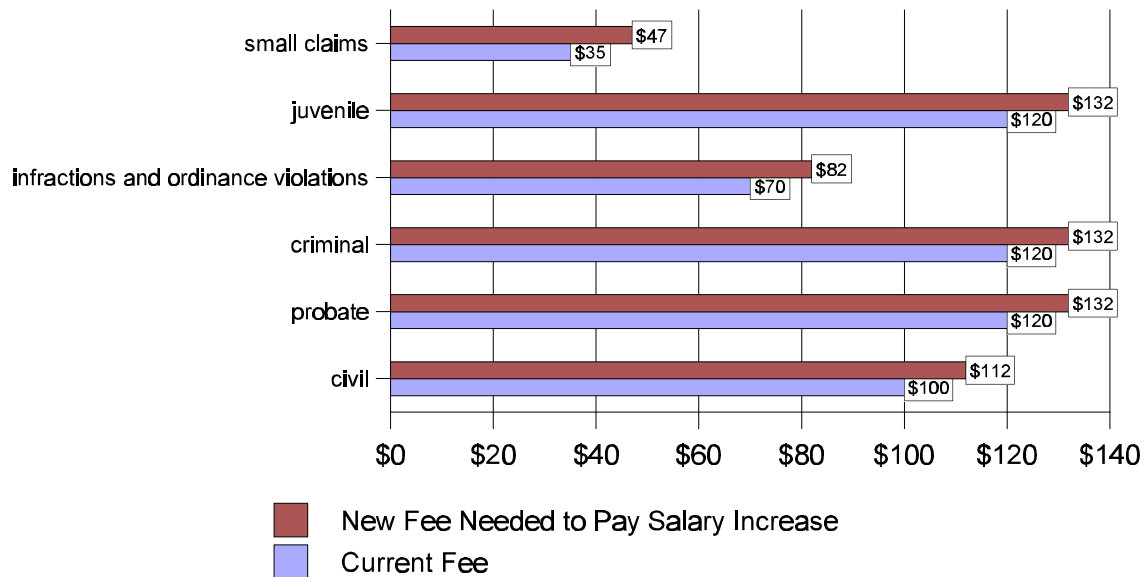
## Attachment C



The estimated cost for this increase in salaries is \$12 million which includes life and disability insurance, Social Security, Medicare and additional pension liabilities.



6) The estimated increase in court fees that would be needed to mitigate additional expenditures from the State General Fund would be \$12 per fee.



## Attachment D

### LEGISLATIVE SERVICES AGENCY

#### Office of Fiscal and Management Analysis

200 W. Washington Street, Suite 302

Indianapolis, Indiana 46204-2789

(317) 233-0696

(317) 232-2554 (FAX)

### MEMORANDUM

To: Senator Richard Bray

From: Mark Goodpaster

Re: Revenue Loss to the State General Fund if Infractions in City and Town Courts Become Local Ordinance Violations

Date: October 17, 2002

---

You requested an estimate of the fiscal impact if traffic infractions that are currently disposed in city and town courts were to be treated instead as local ordinance violations. This memorandum is divided into two parts to answer the question. The first part of the memorandum identifies the two types of revenue that the State could lose. The second part of the memorandum presents an estimate of what this revenue loss might be.

#### **Two Types of Revenue Could Be Lost: Court Fees and Infraction Judgements**

Revenue from court fees could be reduced. Under IC 33-3-6-3, the legislative body of a municipal corporation may establish an ordinance violations bureau.

Under IC 33-6-3-5,

An ordinance violation admitted under this chapter does not constitute a judgment for the purposes of IC 33-19, and ***an ordinance violation costs fee may not be collected from the defendant under IC 33-19-5.*** In addition, an ordinance violation processed under this chapter may not be considered for the purposes of IC 33-19-7-3 when determining the percentage of ordinance violations prosecuted in certain courts. ***(emphasis added)***

Consequently, no court fees would be assessed in these cases where local ordinance violations are processed through a local ordinance violations bureau.

The court fee for either infractions or local ordinance violations is \$70. (IC 33-19-5-2) From city and town courts, the state general fund receives 55% of the court fee. (IC 33-19-7-4) Consequently, for every case that would be disposed by a local ordinance violations bureau instead of in a trial court, the state would lose \$38.50.

The second source of revenue that would be lost would come from infraction judgments that

would no longer be imposed against a defendant against whom a judgment has been entered. The following shows the maximum amounts of judgements that can be assessed under IC 34-28-5-4 when a person is found guilty of an infraction:

<b>Infraction Class</b>	<b>Maximum Judgment</b>
A	\$10,000
B	\$1,000
C	\$500
D	\$25

Proceeds from both court fees and infraction judgments are deposited in the State General Fund.

**The Potential Revenue Loss to the State General Fund:**

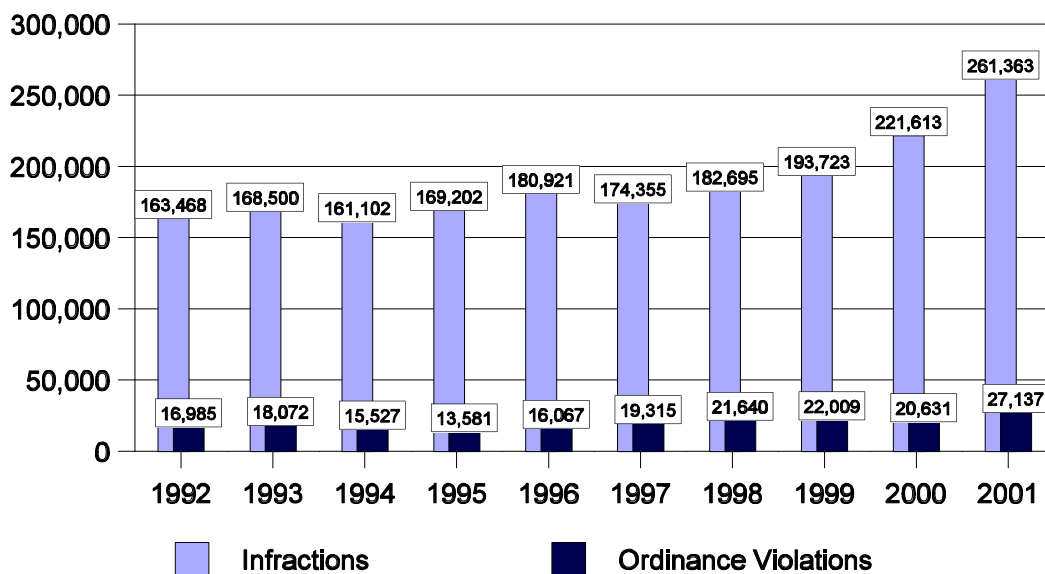
There are three pieces of information that are not collected on a systematic basis that are needed to make this revenue loss estimate.

- The number of traffic infractions that are disposed in city and town courts is not known.
- The number of cases disposed in which the defendant was convicted and actually paid the judgement.
- The average judgment under IC 34-28-5-4 that is ordered by the courts is not known

To estimate the revenue loss from court fees, information from the 2001 Judicial Report and an assumption about the percentage of traffic infractions is made. Based on conversations of judges and former prosecuting attorneys familiar with city and town courts, it is assumed that 90% of the infractions are traffic cases.

The chart below shows the trend in the number of infractions and ordinance violations that are disposed in city and town courts in the past ten years. The chart shows that over the past three years, the number of infractions cases disposed in city and town courts are significantly more than the number of local ordinance violations. Over the past five years, infractions disposed increased by 50% while the number of local ordinance violations cases disposed in city and town courts increased by 40%.

Infractions and Local Ordinance Violations Disposed in City and Town Courts  
CY 1992 through CY 2001



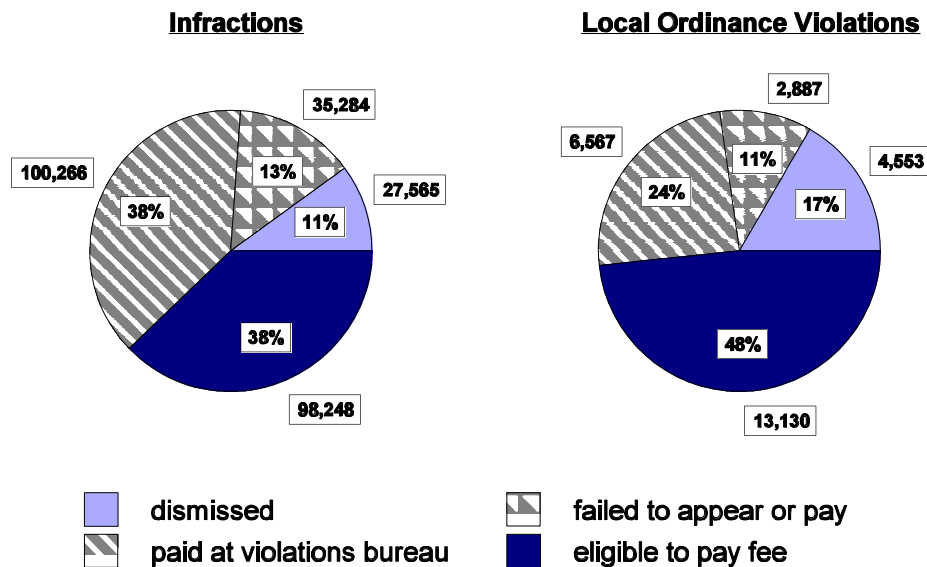
To estimate the potential number of cases where the accused party might pay a fee, three types of cases for which statistics are available for FY 2001 are considered:

- the number of dismissals,
- the number of cases where the defendant failed to appear or to pay and
- the number of cases that are disposed in violations bureaus.

The pie chart below shows each of these methods of disposal and the number of cases

remaining where the defendant might be eligible to pay.

**Method of Disposition of Infractions and Local Ordinance Violations  
in City and Town Courts in CY 2001**



The number of infractions paid in violations bureaus would cause a significant revenue loss if all of these infractions were treated as local ordinance violations. This is because under IC 33-6-3-5, ordinance violations paid at a ordinance violations bureau would no longer be subject to the court cost fee under IC 33-19-5 if they were local ordinance violations. Consequently, defendants who are convicted in these cases would no longer be subject to the court fee. Since the state receives \$38.50 for each case, the revenue loss from payment of these cases at local ordinance violations bureaus is estimated to be \$3.4 Million. (100,266 x 90% x \$38.50).

The revenue loss from infraction judgments no longer being imposed is more difficult to estimate. The unknown factors include the number of infraction cases disposed where the defendant actually paid the fee and the average infraction judgment that is charged.

Of the 98,248 cases where a portion are eligible to pay, it is assumed for illustration purposes that 90% are traffic cases and that between 40% and 60% will actually pay the fee and that the fee will range between \$10 and \$25. Based on these assumptions, the revenue loss will range between \$350,000 and \$1.3 million.

The combined revenue loss from both the loss in court fees and infraction judgements could range between \$3.8 and \$4.8 million if all traffic infractions are treated as local ordinance violations..

## Attachment E

From the Desk of

**Edward W. Najam, Jr.**

Court of Appeals of Indiana

TO: Justice Sullivan

CC: Kurt Snyder, Lilia Judson, Judge Mathias, Ron Miller

RE: CMS Access to NCIC

DATE: October 9, 2002

In response to Justice Sullivan's e-mail of October 2, 2002, I have asked one of my clerks, Paige Freitag, to research whether state legislation is required before we can connect our new CMS with the NCIC. After reviewing both federal and state law and discussing NCIC protocols with Major Fred Pryor of the Indiana State Police, it appears that no such legislation is required.

The NCIC database is authorized by 28 U.S.C. § 534. That statute provides in relevant part that the Attorney General shall acquire, collect, classify, and preserve identification, criminal identification, crime, and other records and exchange such records with the States. Data in the NCIC files is disseminated, at least in part, to governmental regional dispatch centers, established by state statute, which provide communication services to criminal justice agencies. See NCIC – FBI Information Systems Website (<http://www.fas.org/irp/agency/doj/fbi/is/ncic.htm>). Indiana currently has a statute that requires law enforcement agencies to enter criminal and other information into the Indiana data and communication system ("IDACS"). Ind. Code § 5-2-5-12. The creation of IDACS allows all state criminal justice agencies access to information in the NCIC database.

Specifically, under 28 CFR § 20.33(a)(1), criminal history information contained in any DOJ criminal history record information system (including NCIC) is made available to criminal justice agencies for criminal justice purposes. And the definition section of the regulations define "criminal justice agency" to include the courts. 28 CFR § 20.3(g). As a result, under current federal and state law, the new CMS could access

NCIC information (indirectly via the state IDACS control center) without any additional state legislation.

As Major Pryor explained, there is no way to obtain a “direct connection” or link between the new CMS and the FBI database in Virginia. Rather, our goal will be to design an interface between our trial courts and the state IDACS control center which, in turn, is the only direct link to NCIC. According to Major Pryor, there are choices on how to engineer this link. In any event, this access will make it easier for trial courts and their probation departments to run criminal history checks, for example, without using the local sheriff or police department as a middle man. Because federal law permits this access, provided that it is used for “criminal justice purposes,” and we already have a “governmental regional dispatch center” created by statute, no additional legislation at the state level is required.

As a final note, it appears that state legislation is required when an entity other than a “criminal justice agency” as defined by 28 CFR § 20.3(g) desires access for information. For example, NCIC data may be disseminated for use in connection “with licensing or local/state employment or other uses only if such dissemination is authorized by Federal or state statutes and approved by the Attorney General . . . .” 28 CFR § 20.33(a)(3). Indiana has adopted a statute which allows for the dissemination of limited criminal history information to non-criminal justice agencies under certain circumstances, including licensing and employment. See Ind. Code § 5-2-5-5.

In sum, since courts are a “criminal justice agency,” we need no further legislative authority. JTAC does need to design our CMS interface with security features that limit access to IDACS and the NCIC database to those who have a bona fide, court-related need to access that information.

**EWN**

## Attachment F

### Members

Sen. Richard Bray, Chairperson  
Sen. David Ford  
Sen. William Alexa  
Sen. Timothy Lanane  
Rep. Robert Kuzman  
Rep. Dale Sturtz  
Rep. Ralph Ayres  
Rep. Kathy Richardson  
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David Lewis  
Sarah Taylor



## COMMISSION ON COURTS

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### LSA Staff:

Mark Goodpaster, Fiscal Analyst for the  
Commission  
Andrew Roesener, Attorney for the Commission

Authority: IC 33-1-15

To: Members of the Commission on Courts  
From: Mark Goodpaster  
Date: October 14, 2002  
Re: Options to Consider for Senior Judge Proposals

In this memo, I present four options for the Commission to consider about the per diem payments of senior judges and the estimated costs associated with each proposal.

Currently, senior judges are entitled to \$50 per diem and also receive health insurance from the state. Each option would amend IC 33-4-8-5 to increase the per diem salary of the senior judges. In each case the per diem rate would be paid by the state from funds appropriated to the Indiana Supreme Court for judicial payroll. If the payroll fund is insufficient to pay the per diem, the Indiana Supreme Court may issue an order adjusting the per diem rate.

The following presents the facts that are known about the senior judge program and are used to make the fiscal estimates.

Known Facts:	
Number of Trial Court Senior Judges Receiving Benefits in CY 2001	65
Number of Days of Service in CY 2001	3,970
Expenditures @ \$50 Per Diem in CY 2001	\$198,500
Average Number of Days Per Senior Judge in CY 2001	61
Reported Payout For Judges Retirement Fund in 2001	\$8,200,458
Number of Retired Members in 2001	256
Average Payout Per Retired Member in 2001	\$32,033
Average Per Diem Payment Based on 260 Day Year in 2001	\$123
State Salary of Trial Court Judge	\$90,000
Average Per Diem Payment Based on 260 Day Year	\$346
Difference Between Per Diem of Trial Court Judge and Average Payout for Retired Judge	\$223

## Attachment F

### Option 1:

A senior judge is entitled a per diem of \$50 for each of the first 30 days of service in a calendar year, and for each day in excess of 30 days the combination of:

- (1) the compensation paid to a senior judge under this chapter; and
- (2) retirement benefits that the person appointed as a senior judge is receiving or entitled to receive;

may not exceed the minimum compensation to which a full-time trial court judge is entitled under IC 33-13-12.

**First 30 Days at \$50; Next 70 Days at \$223  
Estimated Cost Based on 61 days per year**

	<u>Current Law</u>	<u>Proposed</u>	<u>Added Cost</u>
First 30 Days at \$50	\$1,500	\$1,500	
Next 31 Days at \$223	\$1,550	\$6,913	
Total Cost	\$3,050	\$8,413	
Number of Senior Judges	65	65	
<b>Total Cost For Proposal</b>	<b>\$198,250</b>	<b>\$546,845</b>	<b>\$348,595</b>

### Option 2:

A senior judge is entitled a per diem of \$50 for each of the first 30 days of service in a calendar year and for each day in excess of 30 days the same per diem rate as a senior prosecuting attorney under IC 33-14-1-6(g)(2).

**First 30 Days at \$50; Next 70 Days at \$346  
Estimated Cost Based on 61 days per year:**

	<u>Current Law</u>	<u>Proposed</u>	<u>Added Cost</u>
First 30 Days at \$50	\$1,500	\$1,500	
Next 31 Days at \$346	\$1,550	\$10,726	
Total Cost	\$3,050	\$12,226	
Number of Senior Judges	65	65	
<b>Total Cost For Proposal</b>	<b>\$198,250</b>	<b>\$794,690</b>	<b>\$596,440</b>

## Attachment F

### Option 3:

A senior judge is entitled a per diem; the combination of:  
 (1) the compensation paid to a senior judge under this chapter; and  
 (2) retirement benefits that the person appointed as a senior judge is receiving or entitled to receive;  
 may not exceed the minimum compensation to which a full-time trial court judge is entitled under IC 33-13-12

**First 30 Days at \$223; Next 70 Days at \$223  
 Estimated Cost Based on 61 days per year:**

	<u>Current Law</u>	<u>Proposed</u>	<u>Added Cost</u>
First 30 Days at \$223	\$1,500	\$6,690	
Next 31 Days at \$223	\$1,550	\$6,913	
Total Cost	\$3,050	\$13,603	
Number of Senior Judges	65	65	
<b>Total Cost For Proposal</b>	<b>\$198,250</b>	<b>\$884,195</b>	<b>\$685,945</b>

### Option 4:

A senior judge is entitled a per diem at the same per diem rate as a senior prosecuting attorney under IC 33-14-1-6(g)(2).

**First 30 Days at \$346; Next 70 Days at \$346  
 Estimated Cost Based on 61 days per year:**

	<u>Current Law</u>	<u>Proposed</u>	<u>Added Cost</u>
First 30 Days at \$346	\$1,500	\$10,380	
Next 31 Days at \$346	\$1,550	\$10,726	
Total Cost	\$3,050	\$21,106	
Number of Senior Judges	65	65	
<b>Total Cost For Proposal</b>	<b>\$198,250</b>	<b>\$1,371,890</b>	<b>\$1,173,640</b>